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THREE MISCARRIAGES OF JUSTICE

exercise of discretion, it has been in giving still too much consideration to old-time precedent and technical procedure.

"Courts themselves must restore to the public mind a very general loss of confidence in courts. They must do it by solving business questions by business methods, so that justice is done without fear or favor, denial or delay. The public are fast becoming awake as to all departments of the public service. They are asking questions of the professor, of the parson, of the statesman and of the judge."

In this connection it is interesting to observe that recently an attorney in Jersey City, after having his appeal dismissed by the court, was called upon to give cause why he should not be disbarred. The objection to the appeal was simply that it was frivolous. Some such strenuous measure as this, if applied upon courts, might go a long way toward relieving us of unnecessary delay in legal procedure.

R. H. G.

Three Miscarriages of Justice.—The *Boston Transcript* on August 7, 1911, commented editorially as follows on three cases which have recently been before our Federal courts:

"The argument for the impeccability of judges, and particularly a continuance of the system of life appointment which we in the East hold to pretty rigidly, has received of late a severe jar by the actions of the Federal Court in New York City. It is beginning to appear that there may be something as bad and offensive to real justice in our system as in the recall provisions in the Arizona constitution which we have been hooting at and declaring to be a cowboy and wildcat legislation. Our readers will recall that on May 25, in the trial of the Duveen smuggling case in New York City, Judge J. L. Martin, United States district judge of Vermont, sitting as circuit judge in New York, refused to sentence Henry J. Duveen to prison but let him off with a fine. One reason given for this decision was that Duveen's health was such that he would die in prison; but all have heard of so many of these hopelessly ill culprits who miraculously recovered after being let out of jail or after a similar soft-hearted and soft-headed judge had refused to sentence them to prison, that Judge Martin ought not to be excused for his blindness in this instance. This was a singularly offensive case. The Duveens were given special privileges by the custom-house officers. They were allowed to appraise their own goods and even the goods of their competitors because of their eminent standing. In this way they not only robbed the Government but they had a chance to 'sting' their competitors more than the proper duties. At last they were detected in having themselves underestimated the value of things they brought in and also in having smuggled in, without any duty whatever, millions of dollars of goods. As we said at the time, there is absolutely no excuse for these smugglers, no reason why they should escape punishment. It may not be well to send a dying man to prison, but there is no reason why the judge should not have sentenced and then suspended the sentence and see if Duveen would die so promptly.

"This case attracted attention throughout the country. It was succeeded on July 20 by another customs fraud case, when Hugo Rosenberg, implicated in customs frauds to the extent of one million and a half, was freed by Judge Archbald of the United States Circuit Court on the payment of a twenty-five thousand dollars fine. This sentence was made in spite of the powerful plea

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for a jail sentence by District Attorney Wise. He said: 'He is one of a crooked crowd, and I would rather see him get one day in jail than be let off with the payment of a fine of \$1,000,000. The exaction of a fine would be a travesty on justice. This man is here after having jumped his bond. Before he did that he tried in every possible manner to get free from the indictments by paying a fine that would be but a paltry part of the money out of which he has swindled the Government. He visited my office and, admitting his guilt, crawled upon his knees and tried to kiss my hands in an effort to get me to consent to a fine. I refused to be any party to a money compromise of the case. During the year he has been a fugitive from justice. Rosenberg has in various ways tried to reach me, but I have consistently refused to be a party to any dicker with a criminal of his stamp, guilty of wholesale frauds on the revenue of the country.'

"What brought this case into particular prominence was that on the same day Judge Archbald sentenced a comparatively poor Greek fruit dealer, Dionysius Pollas, to three months' imprisonment for customs fraud. Rosenberg was a millionaire importer of millinery goods, silks and dresses. Pollas imported dates, figs and cheese. As District Attorney Wise said: 'The frauds committed by the man Pollas, whom you have just sentenced to a three months' term in the penitentiary, were but a huckleberry as compared with those perpetrated by Rosenberg. Prison terms are the only way to stop wealthy men violating the customs laws.' This glaring contrast stirred the whole country.

"Now comes another case in the same court and by the same Judge Archbald. This was the wire pool cases which the Government has been prosecuting, and Edwin E. Jackson, Jr., who was the supervisor of these pools, was on Friday fined \$45,000 instead of being sent to jail as District Attorney Wise demanded. There were eighty-four men that were implicated under indictment for their part in this pool. Ten of these changed their pleas of 'not guilty' to *nolo contendere*; one of these was Herbert L. Satterlee, son-in-law of J. P. Morgan. There was but one count against nine of these men and each of them was fined one thousand dollars, but there were nine counts against Jackson and he was fined five thousand on each. This was as heinous a case in the eyes of District Attorney Wise as that of Rosenberg, and the district attorney was vehement in his denunciation of Jackson, who is a lawyer and who organized the pool. It is probable that if the bar of New York has any sense of honor that they will at once disbar Jackson. Here is what the district attorney said against this man in his protest against his being fined instead of jailed:

"He is the worst type of criminal that society can be damned with for he has made his millions by dragging into the illegal pools that he has built up men who were honorable and had no intention of doing an illegal act. Then when he found that his pools were going to be prosecuted, he went all over the country to get the men he had duped to come to his aid. He is not like many others who have been indicted, for he knew well that his practices were illegal. He is a lawyer. Then when the members of the pools became suspicious he fooled them into believing that he had put the whole thing up to the Department of Justice and that it had been approved. It was he who originated the whole scheme for the wire pools and it was he who was responsible for the system of fines that were levied and collected. Instead of a

JUDGE RALSTON'S ADDRESS

legitimate law office, with law clerks, he has maintained a great suite of offices full of detectives, inspectors and accountants to see that the pool members do not break their pool agreements. Fifty different pools were operated from his office. Inasmuch as even the maximum fine would only represent a small percentage of the fortune he has made from his practices, I ask the court to impose a prison sentence.'

"It is hardly necessary for us to add any comment to these three cases. One must, of course, take into account the fact that a district attorney is there for the purpose of getting as strong a conviction as possible and that he is likely to exceed the bounds in demanding extreme punishment, yet Mr. Wise's points are so clearly and so well stated and appeal so much to the average man that there is no going back of them. The fact that his appeals were all overruled in these three cases constitutes an unpleasant reflection upon the Federal courts of New York. They give a handle to the Socialists and all the other apostles of discontent and unrest to rail against our entire social and governmental system. They are, to say the least, most unfortunate and one can easily see Arizona pointing its finger at New York while the country applauds. Mr. Wise is right. The demands of justice and the stopping of such iniquitous practices as smuggling cannot be effected by fining men of wealth. Plenty of money can be got to pay their fines. What will really punish them and stop their crimes is sending them to jail. That's a harsh thing to do, in the eyes of Judge Archbald or our own 'reform' governor, but it only will make the criminal know what lawbreaking entails."

R. H. G.

Judge Ralston's Address.—Judge Ralston, who has acquired a special reputation in the trial of homicide cases, speaks with authority and force in his address to the Pennsylvania State Bar Association upon the delay in the execution of murderers. It is admitted that the criminal law loses much of its force by the long interval which separates the punishment from the crime, and that the multitude of technical delays which are permitted under our procedure impair the popular respect for public justice. While the contrasts that are often made with the prompt disposition of a murder case in England are not always intelligent, they do direct attention to the relative inefficiency of our methods and emphasize the demand for their correction.

How can they be corrected? Judge Ralston, speaking out of abundant experience and thoughtful observation, suggests some practical amendments to the statutes regulating appeals that would shorten the time consumed; but while some improvement might be made by legislation, he concludes, "the delays which now occur at all stages of the proceedings can be avoided in one way only, and that is by the prompt and vigorous action of those whose duty it is to administer and execute the law." The law is more impeded than helped by statutes. If the English courts reach their conclusions directly, it is because they have worked out their own procedure, by centuries of experience, with no more than an occasional statutory confirmation of judicial practice. Very much of the needed reform of practice here might be accomplished by the courts.

The great difference that impresses an unprofessional observer between English practice and our own is that in England a case is ordinarily determined at the trial; here it is only begun. The right to move for a new trial